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THE DOCTRINE AND PRACTICE OF INTERVENTION IN EUROPE.

Intervention is the interference of a state or group of states in the affairs of another state, for the purpose of compelling it to do or refrain from doing certain acts. Its essential characteristic is force, either open or concealed. Simple mediation or even a formal protest, unless there is present the intention of enforcing the demand, does not constitute intervention.[1]

The relation of intervention to international law and even the rules governing the practice are still in an extremely unsettled state.[2] Most writers content themselves with a discussion of the particular conditions under which intervention is or is not justifiable, and make no attempt to determine the place of intervention in a system of international law. Almost without exception they treat the subject in an "*a priori*" manner. From the premises that nations are independent, politically equal and possessed of

[1] Hall: International Law, sec. 88. Holtzendorff: *Handbuch des Modernen Völkerrechts*, vol. iv, p. 131.

[2] A. de Floecker: *De l'Intervention*, chap. 2, sec. 3. "The right of intervention does not exist;" and chap. 3, sec. 9, "Intervention is admissible in certain cases in spite of the absence of a right of intervention."

the same rights, they deduce what the doctrine of intervention must be and what the conditions which justify its use.[1]

Whatever may be said in favor of this deductive method from the ethical standpoint, from the legal and historical point of view it must always remain unsatisfactory. It proceeds from ideals rather than from the facts of history; from the standpoint of what ought to be, rather than from that of what is. States to-day do not base their actions on innate ideas of justice, or upon precepts deduced from considerations of absolute rights antecedent to custom and law, but on rules which can be shown to have been followed by all or most of the states. In every other branch of international law, writers arrive at the doctrine and principles from the practice and precedents established by nations in their dealings with each other. There is no adequate reason why this should not be done with regard to intervention.

In the following study the historic method has been pursued. This has involved a careful analysis of the various phases of the practice of intervention, together with a treatment of its evolution and development. From this analysis has been deduced a theory of intervention which differs radically from the doctrine of intervention hitherto advanced.

For purposes of presentation the cases of intervention are classified as follows :[2]

Intervention :[3]

1. To prevent hostile acts.
2. To preserve the balance of power.

[1] "We might indeed deem that the search for rules of any kind was hopeless, were it not possible to deduce certain clear and unmistakable precepts from principles admitted on all sides. No one doubts the existence of the right of independence, or the duty of self-preservation, and from these we are able by a process of deduction to obtain what we are in search of." Lawrence, sec. 75.

[2] An accepted uniform classification does not exist. A recent writer goes even further and declares that no systematic study of the cases of this important branch of international law has yet been made.

[3] Intervention between two states does not differ in principle from intervention in the internal affairs of an individual state and is therefore not treated separately. See Hall, sec. 88.

3. To maintain, or establish political institutions.

4. To prevent intolerance and anarchy and to enforce reparation for injury to life and property.

5. To enforce treaty rights and obligations.

I.

The most striking instance of intervention to prevent hostile acts is the well known case arising out of the propagandistic decree of the French Revolution. After the first excesses of the Revolution, Austria and Prussia issued their manifesto,[1] declaring their intention and reasons for intervention.

This called forth the famous decree of the convention on November 19, 1792. The decree proclaimed that "the French nation would assure fraternity and assistance to all people who wished to recover their liberty."[2] It was immediately followed by orders to the French generals, "not to allow even the shadow of the ancient authorities to remain."[3] Such a proclamation, if carried into effect, would have involved the very existence of the European governments. Intervention became a necessity, not only for self-preservation but also to prevent attack. In spite of this, England maintained a policy of non-intervention,[4] and as late as December 20, 1792, her ambassador at St. Petersburg sought to avoid the necessity of British intervention on condition that "France rescind any acts injurious to the rights and sovereignty of any other nation, and give in some unequivocal manner a pledge of her intention no longer to foment trouble, or to incite disturbances against other governments."[5] The offer was rejected, and as Pitt declared two

[1] Annual Register, 1791, p. 190.
[2] Martens, Recueil, VI, p. 742.
[3] Annual Register, 1792, p. 281.
[4] Pitt's Speech in the House of Lords. Parliamentary Debates, I Series, vol. 28, p. 449.
[5] Given in Stapleton. Intervention and Non-intervention, p. 20.

years later, "England was forced into war against her will." [1]

Numerous other causes of this character, which led to intervention, might be cited, such as the mobilization of troops, the building of fortresses on the frontier and filibustering and hostile attacks on land by armed bands of citizens from another state. An attack, a threatened attack, or preparations from which an intention to attack may be inferred, have been standing grounds for intervention. It should be said, however, that the danger in such cases has always been direct and immediate, not contingent or remote, and the practice seems to recognize the justice of intervention only in the cases where the evil is sufficiently serious to warrant an ultimate recourse to war. When these conditions are present the history of the practice shows that the right of the individual state to independent action, even on its own territory, has been greatly circumscribed. For the better security of all the states the society of nations appears to have recognized a right above that of the individual state.

II.

Intervention to preserve the balance of power, better than any other part of the subject, illustrates that states are not independent of each other; that they are not politically equal; and that their so-called independence is constantly called in question. With the rise of sovereign states in the sixteenth century the dream of a universal monarch, either emperor or pope, vanished. The very existence of such states depended upon the absence of a ruler who could aspire to such power. Accordingly, there manifested itself very early a jealous disposition to guard against the undue aggrandisement of any one state. The earliest instances of the practice occurred in Italy, where the growth of the free city republics had given

[1] Pitt's Speech in the House of Commons, Feb., 1793. Par. Deb. I Series, vol. 30. p. 345.

rise to a system of balancing in order to preserve the political equilibrium.[1] In Northern Europe it appeared first in the wars of the Reformation. Both France and Sweden engaged in the Thirty Years' War to set a limit to the expansion of Austria. After Westphalia France constituted herself the champion of Protestantism in Germany in order to preserve the balance of power, notwithstanding the fact that the traditions of the French court were diametrically opposed to the new faith.[2] Similarly the Grand Alliance had for its object the preventing of the union of France and Spain under one sovereign.[3] In the wars which grew out of this the European principle prevailed over the ambitions of Louis XIV. The union of the crowns of France and Spain was declared dangerous to the peace of Europe. In the Treaty of Utrecht, 1713, the supremacy of the principle of the balance of power was definitely formulated. The third article of the treaty between the Emperor Charles the Sixth and Philip the Fifth of Spain reads: "In order to perpetuate the equilibrium of Europe it shall be established as a rule that the kingdoms of France and Spain shall never be united."[4] But France and Spain were both independent powers, and according to the accepted theory of independence had a right to dispose of their territory as they pleased. Thus, early in the eighteenth century the principle that there is a right higher than that which belongs to the individual nation is definitely recognized in practice. The conditions established by the Treaty of Utrecht continued till the French Revolution. During that time intervention was directed, not against the aggrandisement of Austria or France as nations, but against the too powerful house of Hapsburg or the dynasty of the Bourbons.

When Europe was again called upon to assert the principle new forces had begun their work. The identification of

[1] Johnson: Europe in the Sixteenth Century, ch. 1.
[2] Wakeman European History, 1598–1713, chs. 6 and 7.
[3] *Ibid.*
[4] Dumont: Correspondence diplomatique, vol, 8, pt. 1, p. 339.

the monarch with the state was less complete, having been undermined by the democratic ideas of the eighteenth century, and consequently, intervention to prevent the aggrandizement of particular dynasties no longer occurred. The coalitions from 1799 to 1814 were alliances between European powers against the alarming growth of France. Dynasty after dynasty had been overthrown, and by a system of federation, governments had been allied to France, establishing conditions altogether incompatible with the idea of the balance of power. After the overthrow of Napoleon the restoration of this balance was the first concern of the Powers. The declared object of the Treaty of Chaument was "to put an end to the misfortunes of Europe, and to secure its future peace by the establishment of a fair equilibrium among the Powers."[1] The first of the secret articles attached to the Treaty of Paris, May 30, 1814, reads: "The disposal of the territories given up by his most Christian majesty under the Third Article of the Public Treaty, and the relations from whence a system of balance of power in Europe is to be derived, shall be regulated at the Congress of Vienna, upon the principles determined upon by the allied powers among themselves, and according to the general provisions in the following articles."[2] "A system of real and permanent balance of power, to be determined by the powers," therefore, was the avowed basis for the readjustment, rather than the doctrine of independence or the rights of the individual states. And this declaration was fully carried out in the actual redistribution of territory made by the Congress of Vienna, which entirely ignored the independence of several states. To assure the maintenance of the equilibrium of Europe, established in accordance with these principles, the Treaty of Paris provided for a permanent European Concert.[3] This council practically controlled the affairs of Europe for

[1] Lawrence: *Commentaires sur les éléments du droit international*, vol. 4, p. 220.

[2] Additional, separate and secret Article to the Treaty, May 30, 1814. Hertslet: Map of Europe by Treaties, Vol. 1, No. 1.

[3] Martens: *Recueil Nouveau*, vol. 10, p. 199.

twenty years. It interfered freely in the concerns of other states, and from 1815 to 1848, the period often spoken of as the thirty years of peace, interventions are frequent. The European equilibrium, however, was not threatened, and cases based on it are absent.

But if the practice rested for the time in abeyance, the doctrine received an emphatic and formal enunciation immediately after the Belgian Revolution in 1830. In the protocol of the London Conference, on the fourteenth of February, 1831, the five Powers declared, in reference to Belgium and the Vienna Congress, that they "had constituted themselves the guardians, not of the sovereignty, but of the disposition of the Belgian Provinces, with the sole intention of making the provinces co-operate in the establishment of a just equilibrium in Europe, and the maintenance of the general peace." "They had the right, and events imposed it upon them as a duty, to provide that the Belgian Provinces, having become independent, shall not endanger the general security and the European equilibrium. Every nation has its rights, but Europe also has her rights. The peace and order of society has given them to her."[1]

In 1831 England and France protested against the entrance of all of Austria into the German Confederation. Lord Palmerston declared that "such a change by deranging the general balance of power, might in all probability lead to consequences of a very serious character, as affecting the interests of Europe at large, and cannot be carried into effect with due regard to the public law of Europe."[2] Similarly a treaty between the Powers in 1852 declares in the preamble that the maintenance of the integrity of the Danish monarchy, as connected with the general interests of the balance of power is of high importance to the preservation of peace.[3] So in 1855 "The Queen of England, the

[1] Martens: *Recueil Nouveau*, vol. 10, p. 199.

[2] Parl. Deb., vol. 105, p. 1355.

[3] Treaty between Great Britain, Austria, France, Prussia, Russia, and Sweden and Norway, London, May 8, 1852. Hertslet, Vol. 2, No. 230.

Emperor of the French and the King of Sweden and Norway, being anxious to avert any complications which might disturb the existing balance of power in Europe, * * * resolved to come to an understanding with the view to secure the integrity of the United Kingdom of Sweden and Norway, * * * and named their plenipotentiaries to conclude a treaty for that purpose."[1] In 1860 Napoleon added a new element to the idea of the balance of power, namely, that of compensation in order that the relative position of the nations interested might remain the same. He demanded adequate concessions to France for the union of Italy and of North Germany, and obtained Savoy and Nice.[2] Although this principle would be difficult to apply in Europe, it has become a recognized practice in the continents of Asia and Africa.

As late as 1870 Great Britain saw fit to reassert the right to intervention on behalf of the equilibrium in Europe, and by two separate treaties with France and Prussia, guaranteed the independence and neutrality of Belgium.[3]

Long before this, however, the principle had been applied in a different field, and produced new and important results. Since the first Greek Revolution the concert of the Powers had been active in adjusting the affairs of Greece, but so long as Greece only was involved the question of the balance of power did not arise. Gradually, however, the position of Turkey became a part of the situation and the leading nations of Europe took alarm. The autonomy of the Ottoman Empire was made the subject of international diplomacy in a manner that paid absolutely no heed to the right of that nation to independence.

In 1833 Russia, having aided the Sultan against Mehemet-Ali, while the other powers remained neutral, secured the consent of the Sultan to the Treaty of Unkiar-Skelessi. By

[1] Annual Register for 1856, p. 323.
[2] British and Foreign State Papers, 1859-60, pp. 343, 412 and 456.
[3] Hertslet, Vol. III, No. 427 and No. 428.

a separate article to the Treaty she not only became the Sultan's ally, but also acquired the right to constant interference in Turkish affairs.[1] Such a preponderance of Russian influence was considered a serious menace to the balance of power in the East, and England and France intervened.[2] The character of the protest and the serious consequences involved, forced Russia to give way. In 1841 she further agreed to participate in a convention of the five powers regarding the Danube and Black Sea, and by so doing yielded her avowed principle of never allowing the affairs of Turkey to come before a European Concert.[3]

The point here yielded by Russia formed the basis for the united action of the powers when Russia seized the Danubian principalities in 1851. The Vienna Conference of 1853 declared that, "the existence of Turkey within the limits preserved by the treaties, has become one of the conditions necessary to the European equilibrium."[4] Russia ignored the declaration and the Crimean War resulted. After the war the principle was reasserted by the Seventh Article of the Treaty of Paris,[5] and by Article Two of the separate treaty between England, France and Austria.[6] Accordingly, when Russia attempted to impose her own terms on the Sultan in the peace of San Stefano, in 1878, the powers at once asserted their claim, and again regulated the Eastern question in the general interest of Europe, at the Congress of Berlin.[7] A glance at the results of the Congress, and the historic conditions out of which it sprang, affords the clearest possible proof that the independence of

[1] Hertslet, Vol. III, No. 168.

[2] Note to the Porte, August 26, 1833, Hertslet, Vol. III, 928.

[3] Count Nesselrode to Prince de Lieven, January 6, 1827: "It is an old and invariable principle of our politics not to permit the establishment of that species of intervention by foreign courts, between ourselves and Turkey." *Handbuch des Völkerrechts*, Vol. IV, p. 168.

[4] Protocol of the Vienna Conference, December 5, 1853. Br. and For. State Papers, 1853-54, p. 1050.

[5] Hertslet, Vol. II, No. 264.

[6] Hertslet, Vol. II, No. 270.

[7] Hertslet, Vol. IV, No. 528 ff.

Turkey, because of the ethical principle involved, plays no part in the international relations between the powers in the East. The Eastern question is to-day under the control of a concert of the great powers, who keep a jealous eye on all acts that threaten to disturb the established equilibrium.

Whatever may be said of the doctrine of the balance of power from an ethical standpoint, the facts of history show that it has been a factor to which the theoretical right of independence has constantly yielded. The principle underlying the doctrine and practice has been, that the existing distribution of territory and power among the principal states at any one time is so essential to law and order in the society of nations that a disturbance of the *status quo* constitutes a valid ground for intervention.

It is, therefore, frequently in conflict with national and race tendencies. The unification of Germany and of Italy had to be accomplished in spite of the then existing basis for the balance of power. Conditions underlying the balance between nations in one period may be quite different from those of another. First it was based upon conditions established by the Peace of Westphalia, 1648, later upon those of the Treaty of Utrecht, 1713, and for the present century the state of possession established by the Congress of Vienna underlies both the principle and the practice.

III.

Intervention in the affairs of another country to maintain or establish a particular form of government is not recognized to-day as justifiable or legal. In the opening years of the century, however, it was again and again asserted as a definite political principle. The conflict between the new and the old régime called forth the extreme views of both, and in the struggle, the

independence of states was ignored. A principle of intervention on political or on institutional grounds was set up. The first step is seen in the declaration of Pilnitz, in which the Emperor of Germany and the King of Prussia, "invoked the other powers conjointly with themselves to employ their forces in order to put the king of France in a situation to lay the foundation of a monarchical government, conformable alike to the rights of sovereigns and the well-being of the French nation."[1] In March, 1792, Austria issued her ultimatum, demanding, among other things, the reestablishment of the powers of the monarchy.[2] This was summarily rejected, and on April 20, France declared war, justifying herself in the "*Exposition des Motifs*" drawn up by Condorcet. This document formulates the principle of non-intervention on political grounds, and stands in strong contrast to the practice of Europe during this period. "The French people" it declares, "free to fix their own form of government, can in no respect have injured, while using that power, either the safety or the honor of foreign crowns."[3] In the manifesto issued by the Duke of Brunswick, the reasons for intervention are further set forth.[4] It is undertaken, says this manifesto, because the principles of Revolution are antagonistic to the ideas of monarchy and because the monarchs fear its contagious effects. But if this was the case already in July, 1792, it is not surprising that the ideas expressed in the manifesto prevailed after the execution of the Royal Family, the decree of the Convention, and the wars of Napoleon.

When the wars were over, the Powers, forgetting that the terrible struggle had been brought on largely by their intervention in the internal affairs of France, reasserted the principles which had formed the basis for their action during the first years of the Revolution. For the first time the

[1] Declaration of Pilnitz, August 21, 1791. Annual Register, 1791, p. 190.
[2] Annual Register, 1792, p. 301.
[3] Annual Register, 1792, p. 263.
[4] Annual Register, 1792, pp. 31 and 280.

forms of a coalition were preserved after peace was established. Regular meetings of the powers were arranged for, the first to be held at Aix-la-Chapelle in 1818.[1] In September of that year the Treaty of the Holy Alliance was signed, and thenceforth, the meetings became reunions of the despotic monarchs for the purpose of maintaining absolute authority against popular encroachments. A nefarious system of European police was set up to prevent popular outbreak, and, failing that, to join in suppressing it wherever it appeared.

The Congresses of Aix-la-Chapelle, Laybach Troppau and Verona were virtually sessions[2] of a European Concert, though Metternich, because of England's attitude, formally disclaimed any intention of establishing a permanent court of control. In a circular letter emanating from Troppau the "Powers who had recently stifled Revolution" claim that, "the Powers have exercised an undeniable right, in concerting together upon the means of safety against those states in which the overthrow of a government caused by revolution, could only be considered a dangerous example, and could not but result in a hostile attitude toward constitutional and legitimate governments."[3] The program of the Holy Alliance was still more definitely announced by Metternich in a Circular Dispatch on May 12, 1821. "Useful or necessary changes in the governments of states must emanate only from the free will and the thoughtful and enlightened initiative of those whom God has made responsible for power." "They (the Powers) will consider void, and contrary to the principles of *the public law* of Europe, all pretended reforms brought about by revolution, or by force."[4]

On this principle the intervention and restoration of absolutism in Spain, Naples and Piedmont were undertaken and

[1] Art. VI of the Treaty of Friendship, etc. Hertslet, Vol. I, No. 44.
[2] Hertslet, Vol. I, No. 36.
[3] Hertslet, Vol. I, No. 105.
[4] Circular Dispatch, May 12, 1821. Martens: *Nouveau Recueil*, Vol. V, 644.

justified.[1] England protested, and for some years France pursued the same policy. When Metternich issued his circular letter, she still disapproved of intervention of this sort. In a circular letter to his agents the minister of foreign affairs, Pasquier, writes concerning it: "This business is a novelty introduced into the law of nations. The first example of its practice was in France, and the recollection of its result should be sufficient to arouse national sentiment and diplomacy against the application of so fatal a principle."[2] Unfortunately for Europe, France departed from this policy. At the instigation of the Three Allies, whom she had joined at the Congress of Verona, in 1822, France carried out the intervention in Spain. That country had applied in vain to the powers of the Quadruple Treaty for help in subduing her rebellious colonies. England refused to co-operate, and without her fleet, the "rotten tubs" of Alexander availed nothing. But in 1822 the appeal of the wretched monarch was more successful. The armies of France reinstated absolutism; the constitution and liberalism were again suppressed. With the death of Alexander I. the Holy Alliance collapsed, but its principles continued to form the basis for the actions of the Three Powers in the affairs of central Europe till 1848.

During the early years of this period, England maintained a principle of non-intervention. In the first years of the Revolution her policy was strictly neutral. Pitt "entertained no fear of the great social upheavals,"[3] and when France declared war, on June 27, he announced that he had not the slightest intention of interfering in the internal affairs

[1] Declaration of the allied Sovereigns, May 12, 1821. Hertslet, Vol. I, No. 108. In his Circular Dispatch to the British missions, January 19, 1821, Castlereagh says: "No government can be more prepared than the British government is to uphold the right of any state, or states, to interfere where their own immediate security and essential interests are seriously endangered by the internal transactions of another state," etc. Hertslet, Vol. I, No. 109.

[2] *Handbuch des Völkerrechts*, IV, p. 141.

[3] Pitt's speech in the House of Commons, February 9, 1790. Par. Deb., second series, vol. 28, p. 449.

of that country.[1] And in accordance with this principle, England at no time sought to impose a particular form of government on France. When the war was over and the absolutist tendency of the monarchs manifested itself, England's stand, in spite of the Tory ministry and Lord Castlereagh, in the foreign office, was uncompromisingly opposed to their pretensions. Such pretensions Castlereagh declared to be "in direct repugnance to the fundamental laws of the Kingdom," and "such as could not be safely admitted as the foundation of a system of international law."[2] This was a clear enunciation of the non-intervention principle, but single-handed, England could do nothing against the policy of intervention of the monarchs in Europe, during the twenties. Only in one instance, in the Spanish-American colonies, did she frustrate their plans. The protests against intervention in Spain itself were useless.[3]

Not till France joined her, after the July Revolution, was the power of the new principles sufficiently strengthened to crush Metternich's system. But it died hard. In September, 1830, Metternich protested against "the presumption of the French government, for its own convenience, to set up a new law of nations, which was nothing more than a complete overturning of all the rules which had until then guided the diplomacy of European states."[4] To him this would-be system of non-intervention was preposterous and over against it he placed the assertion that "the governments could never allow such a delimitation of the sphere of their action on the mere strength of so inapplicable a principle."[5] Accordingly, the threats of France did not

[1] Commons Debates, February, 1793. Par. Deb., Vol. 330, p. 345.

[2] Circular Dispatch to the British Missions, January 19, 1821. Hertslet, Vol. I, No. 107. Here the principle is admirably discussed, and the forces operating in the establishment of International Law clearly brought out.

[3] Canning's Letter on the thirty-first of March, 1821. Annual Register, Vol. 65, p. 141. Br. and For. State Papers, VII, 943. Par. Deb. VIII, 1136.

[4] Cited in *Handbuch des Völkerrechts*, IV, 143.

[5] *Ibid.*

stop Austria from intervening in Piedmont. Her troops occupied the Legations, while France as a counter-move sent her armies to Ancona. In the Netherlands, however, the new principle triumphed, and the proposed invasion by the troops of Prussia, in the interests of Holland was abandoned. At the Conference of München-Gratz a last futile attempt was made to rehabilitate the old system. It is true that in 1849 Russia intervened in the interest of Austria, against the Revolution in Hungary, and that not until the war of 1859 were the pretensions of Austria to intervene in Italy settled, but these are only the last convulsions of a dying cause.

On the other hand, a new phase of political intervention manifested itself during the days when absolutism was in its decline, and that, with the very powers who protested so vigorously against the absolutist policy of the allies. England and France entered on a series of interventions on behalf of constitutional governments. At the outbreak of the Belgian Revolution the Tory ministry in England, feeling itself bound by treaty obligations, proceeded to arrange for a conference of the powers, with a view to "an amicable interference." But the party was defeated before the date for the conference, and the Whigs, who were committed to non-intervention, came into power. Lord Grey, the premier, had said, before the Lords: "We are not bound to interfere by any obligation whatsoever, and since we are not bound, I repeat, my lords, that, in my opinion, sound policy, justice and respect for the independence of other people, as well as regard for the interests of this country, enjoin us on the present occasion not to interfere with the internal affairs of Belgium." And Lord Palmerston: "Every nation has a right to manage its own internal affairs as it pleases, so long as it injures not its neighbors." [1] In

[1] Speeches in Parliament, Par. Deb. III Series, Vol. II, pp. 693 ff. For the attitude of England during this period, see Sir Robert Peel's speech, June 29, 1850, Par. Deb. III Series, Vol. 112, p. 673.

spite of these declarations, England intervened in Belgium, Portugal, Spain and Sicily. By blockading the coast of Holland, England and France forced that country to recognize Belgian independence.[1] In the Quadruple Treaty of 1834[2] the two countries guarantee their aid against Don Carlos and Don Miguel, the representatives of the reactionary and despotic tendencies in Spain and Portugal, affording a striking illustration of how these two states, in their eagerness to support constitutionalism, went almost as far in interfering in the internal affairs of other states as did Metternich himself. The claim to the right of intervention in support of constitutionalism must rest on precisely the same principle as do the acts of the Holy Alliance. On two subsequent occasions, namely, in Portugal in 1846,[3] and in Sicily in 1848, Great Britain acted in a similar arbitrary manner, though again, as is now recognized, in behalf of civilization and progress.[4]

Since the middle of the century, the practice of intervention on behalf of political doctrines or institutions has fallen into disuse. I have treated it thus fully because it is the only phase of the doctrine and practice which has had a completed growth, and which can therefore be looked at as a whole. Further, it illustrates with great clearness the intimate connection between the practice of intervention and dominant political ideas and conditions. It shows that the

[1] This intervention affords Stapleton an opportunity for an impassioned arraignment of the Liberal party. He puts the intervention in Belgium on the same plane as the intervention of the Holy Alliance. But he forgets that the very principle for which he is contending condemned from the outset the arbitrary union at Vienna, of two peoples so radically different in language, race, and religion. By demanding the recognition of Belgian independence, which had been virtually attained, the Liberal party merely rectified another of the acts of Metternich's policy, and by so doing took a positive step in favor of freedom on the Continent. But we are not concerned so much with the justice of the act, as with the fact that intervention was adopted by the two countries fartherest advanced in ideas of liberty and government, notwithstanding the theory of the *laisez-faire* writers that Holland had the right to settle her own affairs.

[2] Hertslet, Vol. II, No. 171.

[3] Müller. Political History of Recent Times, p. 148.

[4] Fyffe, Vol. III, 112.

diplomacy of Europe, and the action of the powers during the period did not proceed from the theory of the political equality of states, and that outside of England and the United States, the autonomy of the individual states was entirely ignored.

IV.

Intervention to prevent intolerance, anarchy and insecurity to life and property has been very common, though there has been little uniformity in the practice. Here perhaps, more than anywhere else, motives for intervention are complex. Persecution is generally attended with excessive cruelty; anarchy and crime not only shock the moral sense of the civilized nations, but also jeopardize commercial interests and render life and property insecure. Consequently, moral and religious causes for intervention are usually joined with commercial reasons.

The oldest form of intervention under this class is that based on religion. But it should be noted at the outset that nearly all cases nominally undertaken on the plea of religion are at bottom political in character. [1] The practice of intervention on religious grounds begun during the Reformation period, received definite sanction in the subsequent treaties. Thus the Treaty of Westphalia made special provision for equality of rights between Catholics and Protestants. France was made the champion of the Protestant cause, a position which she very soon turned to a pretext for constant interference in the affairs of Germany. The interventions of Elizabeth, Cromwell and Charles II. in the interests of foreign Protestants are further examples of the practice.[2] Indeed there is scarcely a treaty during the seventeeth and

[1] Martens: *Précis du droit des gens*, I, 261, says: "Every war in which religion served as a motive makes it evident that religion has never been the sole motive which induced the Powers to engage in war." This is true in modern times, but scarcely so for the seventeenth and eighteenth centuries.

[2] In 1690 Great Britain and Holland intervened in Savoy, and obtained for a portion of the Sardinian subjects the right to exercise their religion. In 1707 Sweden interfered in favor of the Polish Protestants.

early part of the eighteenth century that does not contain provisions in behalf of adherents of one or other of the two great religions.[1] Europe was divided into two hostile camps, and out of this grew a practice of intervention, based on religion which has since entirely ceased.

As early as Richelieu the abuse of the principle was apparent. By a peculiar refinement of policy France ruthlessly suppressed the Huguenots, while she zealously intervened in behalf of the Protestants of Germany. The political object is manifest. So it was with the Russian assumption of protectorships over orthodox Christians in Poland. In Turkey her use of religion as a pretext was even more apparent, and the powers flatly refused her claims, although they were based on treaty agreement with the Sultan.[2] Again, despite the Czar's assurances that the war against Turkey in 1854 was purely religious, the political object was sufficiently evident to lead to the Crimean war.[3]

The numerous instances of intervention connected with the papacy are usually treated under this head, but there seems to be little difference between the papacy as a temporal power and other political states. In 1826 the papacy declared that its temporal power, "was absolutely necessary in the actual order of Providence to the independence and liberty of the Church."[4] Metternich supported the claim. In a note to Thounévil he says; "The capital of the Catholic World belongs to all Catholic nations. It is the residence of the sovereign pontiff and contains the establishments and archives of Catholicism. Nobody has the right to deprive him of them, and Catholic powers have the right to maintain it."[5] Opposed to this were the national interests of Italy, and in the conflict which arose Napoleon III. inter-

[1] Olivia, 1660, Art. II, Nimwegen, 1679, Art. IX, Ryswick, 1698, Art. IV, Utrecht, 1713, Art. LXIII.

[2] Treaty of Kutschouc Kainardji, 1774.

[3] Correspondence respecting the rights and privileges of the Latin and Greek Churches in Turkey. Br. and For. State Papers, 1853-1854, pp. 1049-1056.

[4] Allocution, March 25, 1862. iv, 147.

[5] Note to Thounévil of May 28, 1861, *ibid.*

vened.[1] With the exception of a few months in 1867 French troops occupied Rome for twenty-one years, till the final annexation of the City to Italy in 1870, and the abolition of the temporal power of the papacy.[2]

In modern times intervention on religious grounds is rare. The latest case occurred in a provision of the Congress of Berlin, in which the Powers made religious tolerance a condition of independence to the three Danubian Provinces.[3] On the other hand there is a feature of this kind of intervention which is peculiarly a growth of the present century. The moral sentiment of civilized peoples in modern times has been frequently aroused and governments have been forced to intervene in cases where intolerance has become apprehensive and cruel. When the Greeks applied for assistance in their struggle for independence in 1822, the Holy Alliance looked at the appeal as coming from rebels in arms against their legitimate sovereign. The Greeks were told, "the sovereigns are determined to discountenance the principle of rebellion, however and wherever it shows itself."[4] But the monarchs did not reckon with popular sympathy throughout Europe. Missolonghi fell after a heroic defence, followed by the capitulation of the citadel at Athens on June 5, 1827. Within a month the policy of delay and non-intervention on the part of the governments gave way.[5]

The agreement between England and Russia in regard to intervention was signed by France on July 6, 1827.[6] The treaty provided that the contracting powers would not "take part in the hostilities." Just how they were to carry out intervention it is difficult to see, and the anomalous position

[1] Speech of the Emperor before the Chambers, March 1, 1860, Br. and For. State Papers, 1859–60, p. 630.

[2] Fyffe III, p. 472.

[3] Congress of Berlin, Art. 27, 35, 44. Hertslet XIV, No. 528. For a discussion of this action of the Powers, see Lord Salisbury's Answer to the Anglo-Jewish Association, July 25, 1879.

[4] Muller, p. 75.

[5] Br. and For. State Papers, 1822–1828. Index.

[6] Hertslet, Vol. I, No. 129.

appears in the subsequent results. The Turkish fleet entered the Bay of Navarino and landed the Egyptian troops on September 9th. In an interview between the allied admirals and Ibrahim, a cessation of hostilities was agreed upon. In spite of this the troops continued their barbarous devastations, and when the fleet tried to escape the only thing to be done was to enforce the terms of the armistice. Accordingly without a declaration of war, and amid protestations of friendship, the Turkish fleet was sent to the bottom. As intimated at the outset the motive in this instance was by no means entirely humanitarian in character. Three reasons are given, and among these the English government laid most stress on "the great evil pressing seriously upon her Majesty's own subjects."[1]

Similarly the insecurity to life and property resulting from the state of anarchy in Greece induced the powers in 1856 to land troops and restore order.[2] In the same protocol is the declaration that, "the Pontifical States are equally in an abnormal state; that the necessity for not leaving the country to anarchy, had decided France and Austria to comply with the demands of the Holy See, to occupy Rome and the Legations."[3]

Of greater significance is the action of five of the Powers in 1886, in instituting a pacific blockade of Greece in order to prevent her from fighting Turkey. Similarly in 1897, all the European powers decided to put the Island of Crete in a state of blockade.[4] More recent still is the intervention of all the Powers—the United States acting in concert—now going on in China to compel the government to suppress the Boxers. Besides the sending of troops to Pekin, the pacific blockade of the Pei Ho river and Tien Tsin is contem-

[1] Br. and For. State Papers, 1826–32.

[2] Protocol to the Treaty of Paris, 1856. Br. and For. State Papers, 1855–56, p. 122.

[3] *Ibid.*, p. 123.

[4] Correspondence, Br. and For. State Papers, 1888–89.

plated.[1] But these all show that humanitarian reasons of themselves are rarely sufficient to bring about intervention.[2] In the three cases cited other motives, equally strong existed. Anarchy leads to insecurity of life and property and jeopardizes the interests of other nations.[3]

Sometimes, however, these conditions have been allowed to continue and claims for reparation and indemnity have arisen. In many cases the negligent power has refused to meet the demand and intervention has been resorted to by the nations injured. Thus in 1837 France sent a fleet to blockade New Grenada, and enforce her demands. The following year the coast of Mexico was placed under blockade for six months in order to secure an indemnity to French subjects and to gain for them exemption from excessive taxes and forced loans.[4] One fort was taken, forty-six neutral vessels captured and confiscated, and four Mexican vessels sequestered. By the decision of the arbiter (Queen Victoria), to whom the case was referred, France was sustained in her action. Numerous minor instances might be cited, as for example the blockade of Greece by England to compel the government to make reparation to Don Pacifico, a Jew from Gibralter whose house had been pillaged.

V.

Intervention based on treaty rights or obligations has been common since the peace of Westphalia. On the

[1] *Neue Freie Presse*, June 5, 1900.

[2] The Armenian massacres need only be mentioned. For particulars, see Br. and For. State Papers. 1889–1896, pp. 367 ff.

[3] The efforts made in the supression of the slave trade are usually introduced here, but as there was no attempt to force any state into a particular line of action in regard to it, and as slavery was practically declared to be piracy by the majority of nations in the Treaty of Peace, 1815, I have omitted the subject altogether. See Hertslet, Vol. I, No. 40, Additional Article.

The final steps to suppress the East African Slave Trade are described in State Papers, Africa, No. 7 (1890).

[4] For the intervention of France and England because of cruelties inflicted upon political prisoners, see Annual Register, 1856, p. 234.

ground that previous agreements guaranteed to them special rights and privileges, the states of Europe have again and again assumed the right to intervene in order to secure their privileges. Foremost in the practice come the instances of intervention growing out of treaties guaranteeing the sucession to a certain house or dynasty to the exclusion of another. It is needless to say that this form of treaty has become obsolete; it went along with the patrimonial concept of the state. On August 26, 1790, the National Assembly declared that France would no longer observe those provisions of the family compact of 1761, which related to the monarchs of the Bourbon dynasty, though it would stand by "the defensive and commercial clauses" which its government had contracted with Spain by that compact. By the treaty of November 20, 1815, the contracting powers excluded the Napoleonic family forever "from the supreme power in France."[1] But when the French people elected Louis Napoleon president in 1848 and he became emperor four years later, the powers no longer considered the treaty as binding. In the secret protocol of December 3, 1852, they declare "that the changes which have taken place in the internal conditions in France since the period of 1815 have so modified the order of things to which the previous treaties referred that it would be impossible to apply them to the events which have just transpired; that in consequence the courts of Austria, Great Britain, Prussia and Russia will respect the entire independence of France under the government just established by the will of the nation; that they have resolved to recognize the Prince President as Emperor of the French."[2] Nor did the powers consider themselves bound to intervene in Greece in 1862, though Art. IV of the Treaty of 1832 declared that "Greece shall form a monarchical and independent government, under the sovereignty

[1] *Handbuch des Völkerrechts*, iv, p. 137.
[2] *Ibid.*

of Prince Otho of Bavaria and under the guarantee of the three powers."[1]

As has been seen, France for many years interfered in the affairs of the Germanic Confederation, on the ground that the Treaty of Westphalia not only gave her a right but imposed it upon her as a sacred duty.[2] In 1826 Canning based English intervention in Portugal on similar grounds. England went to the aid of Portugal, he said, "in discharge of a sacred obligation, contracted under ancient and modern treaties." "Let us fly to the aid of Portugal by whomsoever attacked because it is our duty to do so, and let us cease our interference where that duty ends. We go to Portugal, not to rule, not to dictate, not to prescribe constitutions, but to defend and preserve the independence of an ally."[3] A second motive, namely, to support constitutionalism and oppose absolutism, has been noted. When Turkey refused to give up the port of Dulcigno to Montenegro in 1880 in accordance with treaty agreement the powers intervened, the combined fleets appreared before Dulcigno and compelled the transfer.

The Quadruple Treaty of 1834, spoken of above, should be mentioned here, as it affords a striking example of how such a treaty may lead to an alliance with a party within a state. Sometimes obligations are imposed by treaty on a state against its will, as was the case of Russia in the Peace of Paris, in which she had to submit to the article neutralizing the Black Sea.[4] As is well known Russia took advantage of the Franco-Prussian War to declare that she would no longer abide by the provision, and the London Conference yielded the point.[5] Another good instance is the agreement between Great Britain and the South

[1] Hertslet, Vol. II, No. 159.

[2] Art. 17, §§ 5 and 6 of the Treaty of Westphalia.

[3] Canning's speech in the House of Commons, December 11, 1826. Annual Register, xviii, 192.

[4] Peace of Paris, Art. 13. Hertslet, Vol. II, 264.

[5] Br. and For. State Papers, 1870-71, p. 1193.

African Republic in 1884, by which the latter could make "no treaty with any state other than the Orange Free State, nor with any of the native tribes east or west of the republic, without the approval of Great Britain." [1]

Intervention based on treaty agreement has been regarded by certain writers on international law as the only phase of the practice which rests on a legal basis. Lawrence says: "We may visit with the severest moral condemnation the state which acts on it; we cannot brand the action as illegal." [2] The special claims to legality attributed to this form of intervention will be treated later. The unique place given it by the commentator seems to be entirely unwarranted. It is as if a writer on common law declared violations of contracts between individuals the only legal ground for the remedial interference of the courts.

From this historic survey it appears that the practice of intervention does not consist of a number of disconnected, haphazard instances, as is so often supposed.[3] The cases are all based on one or the other of the foregoing principles and show a remarkable degree of uniformity. The tendency is manifestly toward a higher respect for the rights and independence of the large nations, while the independence of small states is made subservient to the higher interest of the society of states. In regard to the various grounds that have served as a basis for intervention in the past it would appear that some have been entirely abandoned, while others are firmly established.

Intervention to prevent hostile acts, when the danger is imminent, is established to-day both in doctrine and practice. A disturbance of the balance of power in its modern

[1] Treaty of Feb. 7, 1884, Art. 4. Br. and For. State Papers, 1883, 1884, p. 5.

[2] Lawrence: International Law, Sec. 19.

[3] The partitions of Poland, so commonly cited as instances of the crime of intervention, were not cases of intervention at all. Instead of proposing to force Poland into a particular line of action, the three powers were intent solely on conquest.

form stands as the ground for the assertion of the higher European right. Revolution and the establishment of a new form of government have not been considered as acts calling for the exercise of intervention since the first half of the century, and the principle seems so antagonistic to modern political thought that it may be said to be abrogated. Intervention on humanitarian grounds is recognized, though it appears that national self-interest has usually been too powerful to allow intervention for humanitarian reasons solely. The precedents show that the stronger motives based on political and economic interests are usually necessary to induce states to intervene. Indeed intervention under this head is always based on a number of different but closely allied grounds, and as such is considered legitimate. In regard to intervention based on treaty agreement the precedents do not speak with any degree of precision. We saw that treaties securing a claim to intervention often became anachronisms, while others are in their very nature antagonistic to the consensus of opinion and precedents, and are therefore illegal from the beginning. With these two exceptions the practice seems to recognize a violation of a compact between states as a legitimate ground for intervention.

If we look for the legal foundation for the practice of intervention, we must bear in mind the essential nature of law. Law is the sum total of all those settled customs, established precedents, official ordinances and legislative enactments that have grown up and been established for the orderly settlement of personal and property relations. In other words, law is the established order of a political society.[1] By the same reasoning we may say that international law is the sum total of all those settled customs, precedents and international rules which have grown up and been estab-

[1] Law is any rule or canon whereby actions are framed. Hooker, Ecclesiastical Law, I, iii, 1.

lished by the larger society of nations for the orderly conduct of international relations.

Nor must we lose sight of the legal essence of international law because of the difference in sanctions. National law has provided regularly appointed and disinterested agencies for the determination and enforcement of the rules governing the individual members of the state. Not so with international law. There are no regularly appointed tribunals and agencies to impose sanctions and to enforce obedience. There is no organized authority. Nevertheless, there is a sanction which, though less certain and less favorable to a just determination, is still possessed of all the force which national political organization can give. This sanction, owing to the absence of organized authority, depends on the political power of the individual nation or nations, which is set in motion for the enforcement of international law.[1] In other words, the work of police must be done by members of the community who are able to enforce the rules. Primarily, the rules of international law may be said to be directed toward the orderly and peaceful conduct of international affairs. So long as nations abide by the rules of orderly conduct, conflict will not arise. When they deviate from the rule the sanction may be applied, and resistance thereto brings war. Intervention occupies a place intermediate between the breach of the law and the application of the sanction. It may be said to have grown out of the practice of nations in their efforts to secure a respect for international right without war. It always carries with it the ultimatum of war in case of resistance. Intervention, therefore, may be considered as one of the steps in the enforcement of international rights.

The force of the sanction to international law has been such as to inspire the individual nations with a wholesome respect for its rules. The effect is to cause the several

[1] By sanction is meant both the penalty and the power necessary to enforce. The three essential elements of law being the rule, the obligation and the sanction.

nations to subordinate their own actions to the larger interest. Self-restraint becomes one of the leading factors in international relations. This self-restraint is based, first, on the principle of self-interest which each nation has in the maintenance of orderly conduct and a definite practice; second, on the fear of consequences arising from a violation of the rule, and third, on the force of national ideals and a law-abiding spirit which are basic to the consensus of international opinion. As in national law it is the certainty of the operation of the rule, the power of enforcing it, and the cost of an infraction that assures its observances on the part of those in whom the spirit of legality is absent.

In most branches of international law, the questions involved are not sufficiently weighty to tempt governments to self-assertion and defiance of the sanction. The matters in dispute concern private interests, consequently the line of action of the different states has been more uniform; precedents have been more readily formed, and the growth of a consensus of opinion and the establishment of a sanction has been more constant and regular. But in the cases where intervention is involved, the questions are usually of fundamental importance, often such as concern the very existence of the particular states. Therefore the development of precedents and rules has been very slow. They have frequently been the result of the supremacy of one state or group of states standing for particular principles, or of a compromise between the representatives of conflicting principles and interests. Intervention has depended more on political policy; on the prevailing thought and institutions of different periods of history. As we have seen, rules and precedents regarding intervention that were once valid differ widely from our present day standard. For example, when the Continental powers intervened in behalf of monarchy in the early years of this century, the conditions existing in the countries against which intervention was undertaken, and the acts of their citizens were honestly looked upon as

infractions of the rights of other states. That we no longer consider such acts and conditions just grounds for intervention does not affect the principle. In common law, many acts that once called down upon the offender the severest punishment, are to-day regarded as not even misdemeanors. The old ideas have been sloughed off. Similarly, acts and conditions once considered criminal and inimical to the society of states in international law, calling for the exercise of the high proceeding of intervention, are no longer regarded as such. It must be borne in mind that the doctrine and practice of intervention has gone through a process of evolution; that the causes justifying intervention at any period may be entirely out of accord with the standards of another, and yet be, historically, perfectly just and legal.

Hence the rules cannot be permanently fixed, as they may be in many other branches of international law. But this does not affect the principle that appears everywhere in our study of the cases, namely that there does exist a right of intervention. The practice shows clearly that states have proceeded from the basis of a group right; the higher interests of the community of nations, as opposed to those of the individual political unit. Individual rights do not appear in the practice as the "*ne plus ultra*" in international law any more than in national law, and the assertion by commentators that intervention can have no legal status, because it is antagonistic to the highest of all international rights, namely, the right of independence, is therefore based upon a false assumption and contrary to the attitude of the leading nations. The practice of nations indicates that they have proceeded from a different assumption; they have assumed that the society of states has certain rights which each state is bound to respect. Their action is based on the principle that there are certain obligations which states owe to each other, and which no state is at liberty to violate; that there is a power residing outside

the individual state superior to it, which assumes to dictate what the individual state may or may not do in its dealings with others; that there is a right superior to national right, and which in a measure controls national will, and that the practice of intervention is a means admissible for enforcing these higher claims against the individual state. Else, how can we explain the consistent assertion of the rights of Europe as opposed to the claims of particular states, the frequent joint interventions, and the modern practice of pacific blockade? Instead of proceeding from the theory that acts of intervention are wrongs—infractions of right—nations have uniformly claimed to act as of right; that in each case the exercise of what they esteemed the right of intervention has been undertaken either as a means of preventing what they considered a wrong, or as a remedy for what the age interpreted as a violation of international obligations.

There has been, however, no international tribunal for the adjudication of such cases. Remedial rights in international affairs can only be enforced through the machinery of individual national governments. This has usually been the political department of the government suffering from a real or supposed breach of international obligation. It is not surprising, therefore, that the decisions of this tribunal, bear a strong political coloring; have in fact, as was stated above, proceeded from the political conditions and ideas of the time.

During the period from 1648 to the French Revolution the idea that the monarch was the state pervaded political thought. Consequently it was only natural that the cases of intervention of that era should nearly all be directed against the undue aggrandisement of certain dynasties. A doctrine of the balance of power with respect to the territorial possessions of the monarch grew out of the identification of the territory of the state with the personal domain of the sovereign. Again, the widespread religious controversy

which formed one of the most important features of the history of Europe during this period, was strongly reflected in the practice of intervention, and shows even more clearly the intimate dependence of the doctrine and practice upon economic and political conditions. Practically all of the cases of intervention of the time were undertaken either on behalf of the balance of power or on religious grounds.

Between the outbreak of the French Revolution and the revolutions of 1848, the doctrine of the balance of power was strongly reasserted in the adjustment at the Congress of Vienna, but the greater number of cases of intervention during these years were based on a different principle. They were carried out in the interests of certain forms of government and of political institutions. Here again the peculiar political conditions of the time formed the basis from which intervention proceeded. A conflict between the democratic ideals of society and government promulgated by the revolution, and the absolutism of the old régime marks the entire period. The strong reaction after the Napoleonic wars had swept all before it, and found expression in a doctrine of intervention based on the principles of the Holy Alliance. For nearly fifteen years the doctrine thus established formed the basis for the action of the continental powers. England, being less affected by the reaction, protested; but single-handed she could do nothing. When, however, the United States joined her in forbidding the application of the continental doctrine in the Spanish-American colonies, she was successful. The commercial interests of England, joined with the democratic ideals of the United States, created a force sufficiently powerful to assert itself against the established rule. With the July revolution of 1830 democracy triumphed in France and that country immediately passed over to the side of England. This brought about an equilibrium of power between the conflicting tendencies, which had before been absent. As a result we find the old principle of intervention on political grounds yielding rapidly to the

new doctrine of non-intervention, which was in harmony with the rising liberalism and the new ideals.[1]

With the triumph of liberalism in the middle of the century a new era began. An intense national spirit swept over Europe, which, combined with the momentous changes of the industrial revolution, left a lasting mark on the political system of every state. New ideals dominate the modern period. The form and content of national institutions has been changed. As a result, the doctrine and practice of intervention have undergone profound modifications. The growth of large states shifted the basis for the idea of the balance of power. The rounding out of Italy and Germany abolished conditions which had constituted a hot-bed for breeding intervention. Conditions of equality were established among a group of large nations, which, together with the advent of the United States as a strong neutral power, is working rapidly toward the establishment of a sanction. Economic and commercial interests, more strongly even than political forces, are tending to foster a spirit of legality in international relations. The results of this are particularly manifest in the frequent actions in concert, and in the attitude of the group of large powers toward the smaller states. Not only are these often put in tutilage and relieved of many of their onerous international duties, but again and again as we have seen, the large powers either by pacific blockade or in some other manner, intervene in their affairs in order to enforce the fulfillment of international obligations.

These and other recent developments all show that intervention is becoming more and more recognized as the legal means by which the society of nations enforces its rights.

[1] Here the forces operating toward the development of law, international as well as national, are clearly seen. Just as soon as there is sufficient power back of certain ideals or demands they become law; rules governing and determining actions. For example, a certain class or organization may have sufficient influence to secure legislation highly favorable to its peculiar interests, though the majority of the people are not at all in favor of it.

This is true whether it is carried out by several states or by an individual state, acting in accordance with precedent and the consensus of international public opinion, although the modern practice shows a strong tendency towards action in concert. *Intervention, therefore, instead of being outside the pale of the law of nations and antagonistic to it, is an integral and essential part of it; an act of police for enforcing recognized rights, and the only means, apart from war, for enforcing the rules of International Law.*

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